Reprinted
January 29, 2008

HOUSE BILL No. 1117

DIGEST OF HB 1117 (Updated January 28, 2008 4:49 pm - DI 73)

Citations Affected: IC 6-3.1; IC 8-1; noncode.

Synopsis: Coal gasification and substitute natural gas. Provides that a taxpayer awarded a coal gasification technology investment tax credit may agree to use less than 100% Indiana coal in the qualifying coal gasification project and qualify for the credit if the taxpayer: (1) wishes to assign the tax credit; and (2) certifies to the Indiana economic development corporation that partial use of other coal is necessary to result in lower rates for Indiana retail utility customers. Changes the definition of "substitute natural gas" to include gas: (1) produced by a facility outside Indiana; and (2) converted from coal from a location other than the Illinois basin. Changes the definition of a "customer choice program" to include customers located in the service area of an electric utility. Provides that when substitute natural gas (SNG) purchase obligations are proportionally assigned due to a customer choice program, the assignee must meet the assignment requirements in the previously approved contract for purchase of the SNG. Provides that a taxpayer that purchases from an Indiana business certain equipment used to produce energy derived from the use of wind or from the use of anaerobic digestors is entitled to a credit against state income tax liability. Provides that the amount of the credit is 10% of the purchase price of the equipment.

Effective: January 1, 2008 (retroactive); January 1, 2009.

Stilwell, Koch, Battles, Lutz J

January 8, 2008, read first time and referred to Committee on Commerce, Energy and Utilities.
January 24, 2008, reported — Do Pass.
January 28, 2008, read second time, amended, ordered engrossed.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1117

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3.1-29-19, AS AMENDED BY P.L.175-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 19. (a) The corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

(1) A detailed description of the project that is the subject of the agreement.

(2) The first taxable year for which the credit may be claimed.

(3) The maximum tax credit amount that will be allowed for each taxable year.

(4) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.

(5) If the facility is an integrated coal gasification powerplant, a requirement that the taxpayer shall pay an average wage to its employees at the integrated coal gasification powerplant, other than highly compensated employees, in each taxable year that a

tax credit is available, that equals at least one hundred twenty-five percent (125%) of the average county wage in the county in which the integrated coal gasification powerplant is located.

(6) For a project involving a qualified investment in an integrated coal gasification powerplant, a requirement that the taxpayer will maintain at the location where the qualified investment is made, during the term of the tax credit, a total payroll that is at least equal to the payroll that existed on the date that the taxpayer placed the integrated coal gasification powerplant into service.

(7) A requirement that:

(A) one hundred percent (100%) of the coal used:

(i) at the integrated coal gasification powerplant, for a project involving a qualified investment in an integrated coal gasification powerplant; or

(ii) as fuel in a fluidized bed combustion unit, in a project involving a qualified investment in a fluidized bed combustion technology, if the unit is dedicated primarily to serving Indiana retail electric utility consumers;

must be Indiana coal, **unless the applicant wishes to assign the tax credit as allowed under section 20.5(c) of this chapter and the applicant certifies to the corporation that partial use of other coal is necessary to result in lower rates for Indiana retail utility customers;** or

(B) seventy-five percent (75%) of the coal used as fuel in a fluidized bed combustion unit must be Indiana coal, in a project involving a qualified investment in a fluidized bed combustion technology, if the unit is not dedicated primarily to serving Indiana retail electric utility consumers.

(8) A requirement that the taxpayer obtain from the commission a determination under IC 8-1-8.5-2 that public convenience and necessity require, or will require:

(A) the construction of the taxpayer's integrated coal gasification powerplant, in the case of a project involving a qualified investment in an integrated coal gasification powerplant; or

(B) the installation of the taxpayer's fluidized bed combustion unit, in the case of a project involving a qualified investment in a fluidized bed combustion technology.

(b) A taxpayer must comply with the terms of the agreement described in subsection (a) to receive an annual installment of the tax credit awarded under this chapter. The corporation shall annually determine whether the taxpayer is in compliance with the agreement.

If the corporation determines that the taxpayer is in compliance, the corporation shall issue a certificate of compliance to the taxpayer.

SECTION 2. IC 6-3.1-32 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

Chapter 32. Credit for Purchase of Qualified Equipment

Sec. 1. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 2. As used in this chapter, "qualified equipment" means equipment used to produce energy that is:

(1) for retail or commercial use; and

(2) derived from the use of wind or from the use of anaerobic digestors.

Sec. 3. As used in this chapter, "state income tax liability" means a taxpayer's total tax liability that is incurred under IC 6-3-1 through IC 6-3-7, as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 4. (a) A taxpayer that purchases qualified equipment from an Indiana business (as certified by the Indiana economic development corporation) in a taxable year is entitled to a credit against state income tax liability for that taxable year. The amount of the credit is equal to ten percent (10%) of the purchase price of the qualified equipment.

(b) A taxpayer may not claim a credit under this chapter for the purchase of qualified equipment if the taxpayer claims another state income tax credit or deduction for that same qualified equipment.

Sec. 5. If a pass through entity is entitled to a credit under this chapter but does not have state income tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 6. (a) If the amount of the credit determined under this

chapter for a taxpayer in a taxable year exceeds the taxpayer's state income tax liability for that taxable year, the taxpayer may carry the excess credit over for a period not to exceed the taxpayer's following five (5) taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or a refund of any unused credit amount.

Sec. 7. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department.

Sec. 8. The department, with the assistance of the Indiana utility regulatory commission, shall adopt rules necessary to carry out this chapter.

SECTION 3. IC 8-1-2-42.1, AS ADDED BY P.L.175-2007, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 42.1. (a) As used in this section, "substitute natural gas" means pipeline quality gas produced by a facility ~~in Indiana~~ that uses a gasification process to convert coal ~~from the geological formation known as the Illinois Basin~~ into a gas capable of being used:

(1) by a utility to supply gas utility service to end use consumers in Indiana; or

(2) as a fuel used by a utility to produce electric power to supply electric utility service to end use consumers in Indiana.

(b) As used in this section, "customer choice program" means a program under which ~~certain~~ residential and commercial ~~gas~~ consumers located in the service area of a gas **or electric** utility may:

(1) ~~elect to~~ purchase their ~~gas~~ supply from a provider other than the ~~gas~~ utility in the service area; and

(2) receive transportation service from the ~~gas~~ utility in the service area for the delivery of the ~~gas~~ **supply** purchased under subdivision (1) to the consumer's premises.

(c) Subject to IC 8-1-8.9 and notwithstanding any other law, if the commission approves a contract for the purchase of substitute natural gas, or electricity generated in connection with the production of substitute natural gas, by a utility, the commission shall allow the utility to recover the following costs on a timely basis throughout the term of the contract:

(1) All costs incurred in connection with and resulting from the utility's purchases under the contract, including the cost of the

substitute natural gas and related costs for generation, transmission, transportation, and storage services.

(2) All costs the utility incurs in obtaining replacement gas if the seller fails to deliver substitute natural gas required to be delivered under the contract, including the price of the gas, and related transportation, storage, and hedging costs, to the extent those costs are not paid by the seller.

(3) Upon petition by the utility, any other costs the commission finds are reasonably necessary in association with the contract.

(d) Any costs recovered under subsection (c):

(1) are in addition to the recovery of other costs; and

(2) shall be made through an adjustment under section 42 of this chapter or another rate adjustment mechanism that allows for comparable timely cost recovery.

(e) If a customer choice program is implemented, expanded, or renewed for a utility during the term of a contract approved by **order of** the commission under subsection (c) that has the effect of reducing the utility's sales volumes, a condition of the authorization of that program must be the proportionate assignment of the gas or electric utility's substitute natural gas purchase obligation to the service providers in the customer choice program **that meets the assignment requirements in the approved contract.**

(f) Regardless of changes in market conditions or other circumstances, the commission may not take any action during the term of a contract approved under this section that adversely affects a utility's right to timely recover costs under this section or to otherwise fully recover such costs.

(g) With respect to utilities that are parties to a contract for the purchase of substitute natural gas approved by the commission under this section, the state covenants and agrees that as long as the contract is in effect the state will not limit, alter, or impair a utility's right to recover costs as provided in this section. Notwithstanding any other law, neither the commission nor any other state agency, political subdivision, or governmental unit may take any action that would have the effect of limiting, altering, or impairing a utility's right to recover costs as provided in this section.

SECTION 4. [EFFECTIVE JANUARY 1, 2009] **IC 6-3.1-32, as added by this act, applies to taxable years beginning after December 31, 2008.**

SECTION 5. **An emergency is declared for this act.**

COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Energy and Utilities, to which was referred House Bill 1117, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

CROOKS, Chair

Committee Vote: yeas 9, nays 1.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1117 be amended to read as follows:

Page 3, between lines 2 and 3, begin a new paragraph and insert:

"SECTION 2. IC 6-3.1-32 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

Chapter 32. Credit for Purchase of Qualified Equipment

Sec. 1. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 2. As used in this chapter, "qualified equipment" means equipment used to produce energy that is:

(1) for retail or commercial use; and

(2) derived from the use of wind or from the use of anaerobic digestors.

Sec. 3. As used in this chapter, "state income tax liability" means a taxpayer's total tax liability that is incurred under IC 6-3-1 through IC 6-3-7, as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 4. (a) A taxpayer that purchases qualified equipment from an Indiana business (as certified by the Indiana economic development corporation) in a taxable year is entitled to a credit against state income tax liability for that taxable year. The amount of the credit is equal to ten percent (10%) of the purchase price of the qualified equipment.

(b) A taxpayer may not claim a credit under this chapter for the purchase of qualified equipment if the taxpayer claims another state income tax credit or deduction for that same qualified equipment.

Sec. 5. If a pass through entity is entitled to a credit under this chapter but does not have state income tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 6. (a) If the amount of the credit determined under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state income tax liability for that taxable year, the taxpayer may carry the excess credit over for a period not to exceed the taxpayer's following five (5) taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or a refund of any unused credit amount.

Sec. 7. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department.

Sec. 8. The department, with the assistance of the Indiana utility regulatory commission, shall adopt rules necessary to carry out this chapter.".

Page 4, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 4. [EFFECTIVE JANUARY 1, 2009] **IC 6-3.1-32, as added by this act, applies to taxable years beginning after December 31, 2008.**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1117 as printed January 25, 2008.)

GRUBB